Digitized by the Internet Archive
in 2010 with funding from
Lyrasis Members and Sloan Foundation

http://www.archive.org/details/minorityrepselect1860mary

[Document AA.]

BY THE SENATE,

March 5th, 1860.

Read, and 500 copies ordered to be printed.

MINORITY REPORT

OF THE

SELECT COMMITTEE

APPOINTED

ON THE PART OF THE SENATE

IN RELATION TO THE PETITION

FOR THE REMOVAL OF JUDGE STUMP.

MINORITY REPORT.

The undersigned, one of the Select Committee on part of the Senate, to whom was referred the Memorial of sundry citizens of Baltimore city, for the removal of the Hon. Henry Stump, Judge of the Criminal Court of that city, does not concur in all the views presented by the majority of the Committee, and therefore submits the following as a minority report:

The 30th Article of the Declaration of Rights declares:

"That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; *wherefore*, the Judges shall not be removed, except for misbehavior, on conviction in a court of law, or by the Governor, upon the Address of the General Assembly; *provided*, that two-thirds of all the members of each House concur in such Address."

The 9th section of the 4th Article of the Constitution declares:

"The Judges of the several Judicial Circuits shall be citizens of the United States, and shall have resided five years in this State, and two years in the Judicial Circuit for which they may be respectively elected, next before the time of their election, and shall reside therein while they continue to act as judges; they shall be taken from among those who, having the other qualifications herein prescribed, are most distinguished for integrity, wisdom and sound legal knowledge, and shall be elected by the qualified voters of the said circuits, and shall hold their office for the term of ten years, removable for misbehavior, on conviction in a court of law, or by the Governor, upon the Address of the General Assembly, provided that two-thirds of the members of each House shall concur in such Address."

The 13th section of the same Article, relating to the Criminal Court of Baltimore city, says that said Court shall "consist of one judge, who shall also be elected by the legal and qualified

voters of the said city, * * and shall be subject to the provisions of this Constitution, with regard to the election and qualification of judges, term of office, and removal therefrom."

It will be seen, by reference to the above provisions, that there are two modes by which the Judge of the Criminal Court of Baltimore city may be removed from office.

FIRST. He may be removed "for misbehavior, *on conviction in a court of law.*"

SECOND. He may be removed "by the Governor, upon the *Address of the General Assembly*, provided that two-thirds of all the members of each House concur in said Address."

The memorialists charge Judge Stump with "misbehavior" in office, and it was therefore competent for them to have resorted to the FIRST mode of removal, viz: by "*conviction in a court of law.*" Considering the brief period to which the session of the General Assembly is limited, and the unusual amount of important business which has been presented for the attention of its members, it is to be regretted that the memorialists did not find it consistent with their views of propriety to have resorted, for redress, to a Grand Jury and Petit Jury instead of the Senate and House of Delegates. The undersigned admits that there seems, at first view, to be much force in the statement made in the memorial, that such mode of proceeding would be objectionable, because the case would be tried in the same Court where Judge Stump presides. The same objection applies in the case of the Circuit Judges of the twenty-one counties; each one of whom has exclusive jurisdiction in all the criminal trials in his respective circuit; in which alone, he could be indicted for any alleged "misbehavior" in office. In Judge Stump's case, an indictment against him might be *removed for trial* out of his circuit; but, in several of the county circuits, even this would be impracticable, as the removal must be to an *adjoining county*. In those county circuits just alluded to, it would be impossible, under existing laws, to have an indictment against a Circuit Judge (unless by his own consent) tried before any other Judge but himself! But, no such *insuperable* objection to proceeding by indictment applies to the case now under consideration; as a removal of the trial could readily be had to a court out of Judge Stump's judicial circuit.

Whatever the result of the present proceeding, the remedy indicated will remain open to the memorialists and all other citizens of Baltimore.

But, as the said memorialists have seen proper to elect the *second* mode of redress, it is due to them and to myself as one of the Committee, to state briefly the reasons why I cannot concur in the report made by the majority.

In the first place, I do not think the Committee were vested with the power to *try the case*, and this they have assumed to do. That power was with the twenty-two members of the Senate and not with the three members of the Committee. It is true, that the Senate by an order to that effect, authorized the Committee to send for persons and papers. But for what purpose? Not to try Judge Stump, but to ascertain whether there were sufficient grounds to justify *putting him on his trial!* In my opinion, the powers and duties of the Committee extended, and could extend, no farther than this.

The Committee were the Grand Jury; the Senate and House of Delegates constitute the *jury of the country*, who alone are empowered to hear and decide the case. Before the Senate and House of Delegates, (siting either separately as two bodies or jointly as one,) Judge Stump and the memorialists are both entitled to a hearing, if they so demand. At the first meeting of the Committee the counsel of Judge Stump *did* demand *such* a hearing for his client, and that application has never been withdrawn, and in my opinion said application should be gratified, and no vote taken by the Senate upon the prayer of the memorialists, until the evidence for and against their allegations has been heard and considered by the *Senate*.

It may be answered that some evidence was taken *before the Committee* on either side. It is therefore proper I should state, that, according to my views, such evidence was taken merely to justify a report of the Committee as to whether Judge Stump should, or should not, be *put upon his trial;* and it is also proper to state, that up to the moment of the date of the majority report, Judge Stump was in attendance at Annapolis and stating to members of the Committee that he had still many other important witnesses whom he wished to have examined in his behalf.

It may be said, in answer to the above views, that Article 30 of the Declaration of Rights, merely says that a Judge may be removed "upon the address of the General Assembly," and that there is nothing in said article which makes it the duty or the General Assembly to grant the accused a *trial*.

There are certain general principles, which apply to the administration of justice among every people who profess to be governed by written constitutions and laws. The most important and sacred of these principles is that which declares, that no man shall be condemned, or have any of his rights decided upon, without having afforded to him the opportunity of a hearing. It would be strange indeed, if a case like the present, involving as it does such important rights, should be the only exception to this universal rule, and that the same

constitution which guaranties to a party a trial, where he has involved *property* to the amount of "*five* dollars," should authorize a judgment against him *without trial* where the effect of the judgment would be to deprive him of a future salary amounting in the aggregate to nearly *four thousand* dollars!

In my judgment, our State Constitution presents no such unjust and anomolous feature. By the 41st section of the 3d article, provision is made for those trials commonly known as "*impeachments.*" A majority of the House of Delegates must concur in an impeachment, and two thirds of the Senate must concur in a conviction. It seems to me that the provisions of the 30th Article of the Declaration of Rights and of the 9th section of the 4th Article of the Constitution, relating to the *removal of Judges* only, are intended as the *special mode of impeachment* applicable to those officers. As to other officers there may be a removal by a vote of a *majority* of the House and two thirds of the Senate, (sec. 41 of article 3.) But as to *Judges* it is declared, "That the INDEPENDENCY and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; WHEREFORE the Judges shall not be removed except * * upon the address of * TWO THIRDS of all the members of EACH House.

An attentive consideration of the language of the 30th Article of the Bill of Rights will shew, that it was the intention of the framers to secure the "INDEPENDENCY" of Judges, by making *their* removal from office *more* difficult than that of others. But, if the Judges are the only officers who can be removed by the *capricious* action of the General Assembly, *without a trial*, or even without evidence, then the plain intention of said 30th Article would be nullified; because the removal of Judges, instead of being the *most difficult*, would be the *most easy* of accomplishment.

The undersigned, for the reasons above stated, presents the Resolutions hereto annexed, as a substitute for the "address" suggested by the report of the majority of the Committee.

COLEMAN YELLOTT.

RESOLUTIONS.

Resolved, That the Senate, having received and considered the Reports made from its Select Committee, to whom was referred the Memorial for the removal of the Hon. Henry Stump, Judge of the Criminal Court of Baltimore city, hereby fixes Thursday, the 8th day of March, 1860, for the trial of the said Henry Stump, as Judge of the Criminal Court of

Baltimore city, upon the charges made against him by the said Memorial.

Resolved, That the said trial shall commence at eleven o'clock, A. M. on said day, and shall be proceeded with in preference to all other business; and the Secretary of the Senate is hereby directed to notify, forthwith, said Henry Stump, and the said memorialists, of the passage of these Resolutions, by furnishing said parties, or their counsel, with a certified copy of the same.